

**(1991) 01 SC CK 0041**

**In the Supreme Court Of India**

**Case No :** Interlocutory Application No. 1 of 1989 in Writ Petition No. 16093 of 1984 etc.

M.L. Jain

APPELLANT

Vs

Union of India

RESPONDENT

**Date of Decision :** 22-01-1991

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** AIR 1991 SC 928 : (1991) 62 FLR 494 : (1991) 5 JT 133 : (1991) 1 LLJ 499 : (1991) 1 SCALE 64 : (1991) 1 SCC 644 : (1991) 1 SCR 98 : (1991) 1 UJ 369

**Hon'ble Judges :** Ranganath Misra, C.J.;M.H. Kania, J

**Bench :** Division Bench

**Advocate :** S.M. Jain, S. K. Jain, Pratibha Jain and Pradeep Agarwal, for the Appellant; Arun Jaitly, Additional Solicitor General, Kailash Vasdev and A. Subhashini, for the Respondent

**Final Decision :** Disposed Of

**Judgement**

Ranganath Misra, CJ and M.H. Kania, J.—Petitioner was a member of the Rajasthan Judicial Service and was elevated as a Judge of the Rajasthan High Court on July 1, 1975. He was transferred to the Delhi High Court from where he retired on July 21, 1984. A dispute relating to his pension became the subject-matter of a writ petition before this Court and was disposed of on April 9, 1985 M.L. Jain and Another Vs. Union of India and Others, . This Court fixed his pension at Rs. 21,500 per annum.

2. In the meantime, certain changes in the High Court Judges (Conditions of Service) Act, 1954, were brought about, firstly, by Central Act 38/86 and again by Central Act 20/88. Petitioner applied to this Court in Civil Miscellaneous Petition No. 18044/88 asking for benefits under the Amending Act. This Court by its decision on August 18, 1988, refixed petitioner's pension at Rs. 41,600 per annum with effect from January 1, 1986, and at Rs. 46,100 per annum with

effect from November 1, 1986, keeping the two amendments referred to above in view *M.L. Jain Vs. Union of India (UOI) and Others*, . In paragraph 19 of this Court's order, it was stated:

We refrain from expressing any opinion as to the effect of lifting of the ceiling on the special additional pension at Rs. 8,000 per annum placed by Clause (b) of paragraph 2 of Part HI of the First Schedule. The question really does not arise for our consideration at the moment and is left open.

3. The petitioner has now applied to this Court challenging the ceiling on additional pension appearing in Clause (b) of paragraph 2 of Part III of the First Schedule to the High Court Judges (Conditions of Service) Act of 1954. The First Schedule deals with pension of Judges. Judges in High Court are recruited from three sources:

- (a) from the Bar;
- (b) members belonging to the former Indian Civil Service; and
- (c) officers of the State Judicial Service.

In this case we are concerned with Part III as petitioner had been elevated as a Judge of the High Court from the Rajasthan State Judicial Service. In respect of such a Judge the pension payable is prescribed to be:

- (a) the pension to which he is entitled under the ordinary rules of his service if he had not been appointed a Judge, his service as a Judge being treated as service therein for the purpose of calculating that pension; and
- (b) a special additional pension of Rs. 1,600 per annum in respect of each completed year of service for pension, but in no case such additional pension together with the additional or special pension, if any, to which he is entitled under the ordinary rule of his service shall exceed Rs. 8,000 per annum.

Provided that the pension under Clause (a) and additional pension under Clause (b) together shall in no case exceed Rs. 54,000 per annum in the case of a Chief Justice and Rs. 48,000 per annum in case of any other Judge.

Since this Court had fixed the pension at Rs. 46,100 and petitioner's claim for being put at par with other Judges by fixing his pension at Rs. 48,000 per annum had not been accepted, petitioner has approached this Court challenging the ceiling of Rs. 8,000. According to the petitioner, he had put in nine years of completed service as a Judge and on the basis of the provision for special additional pension of Rs. 1,600 per annum in respect of each completed year of service for pension he was entitled to Rs. 14,400 but the limit in the proviso would have the effect of fixing ceiling at Rs. 48,000 per annum. There was no justification to introduce a further ceiling of Rs. 8,000 per annum irrespective of the years of completed service rendered and allow a discrimination to operate. Once the proviso has a limit which meets the purpose there is no basis for the further limit of Rs. 8,000 as contained in paragraph (2) above.

4. The counter-affidavit filed on behalf of the Ministry of Law and Justice sought to justify the limit by referring to cases of Central Civil Service Officers retiring as Secretaries to Government where full credit was not being given for the entire period of service rendered and a ceiling was fixed. Such a ceiling actually is fixed in respect of all the three situations covered by the First Schedule. A member of the Bar with 14 years of completed service out of which six years are served as a Chief Justice or as a Judge of the Supreme Court gets the maximum pension of Rs. 54,000 and in the event of his retirement without becoming Chief Justice or a Judge of the Supreme Court, his pension entitlement is Rs. 48,000 per annum. Similar is the provision relating to the members of the Indian Civil Service who were earlier elevated as Judges. It is the contention of the petitioner that once a ceiling limit was fixed as contained in the proviso of the Third Part, there was no further justification for the paragraph 2(b) ceiling. We find full force in the submission. The reasons which weighed with this Court on the earlier occasion for enhancing the petitioner's pension fully apply to the present aspect. The ceiling of Rs. 8,000, therefore, is not necessary to be imposed and if that is applied, a situation giving rise to the application of Article 14 of the Constitution does arise. In fact, the presence of the proviso clearly brings out the intention that no emp(sic)is sought to be made between Judges recruited from the different sources for the matter of the ceiling on pension. We, therefore, modify the order of this Court fixing petitioner's pension at Rs. 46,100 and require his pension to be fixed at Rs. 48,000 per annum by holding that the ceiling in paragraph 2(b) of Part III of the First Schedule is unsustainable under Article 14 of the Constitution and would not be operative. We direct that petitioner's pension from November 1, 1986, shall be fixed at Rs. 48,000 a year.

5. We would make it clear that as we have held that paragraph 2(b) is ultra - vires, it will follow that all cases to which the present situation applied should be revised by the Union of India without requiring representations or applications from the retired Judges concerned.

6. There would be no order as to costs.